

CLAIM OF THE MARQUIS DE MAISON ROUGE.

FEBRUARY 4, 1828.

Mr. WHIPPLE, from the Committee on the Public Lands, to which the subject had been referred, made the following

REPORT:

*The Committee on the Public Lands, to which was referred the claim of the Marquis de Maison Rouge to a tract of land in the State of Louisiana, have had the same under consideration, and submit the following report:*

The committee do not deem it necessary to enter into an examination of the evidence which has been filed either in support of, or against, the claim of the Marquis de Maison Rouge to several tracts of land situated in the parishes of Ouachita and Catahoula, in the State of Louisiana, and said to contain thirty leagues square. It is sufficient, perhaps, for the committee to state, that the claimant or claimants set up title to the land in question by virtue of a grant, or pretended grant, issued by the Baron de Carondelet, dated the twentieth day of June, seventeen hundred and ninety-seven, and that the Government of the United States resist the claim, firstly, because the documents to establish the claim of those who set up title under the Marquis de Maison Rouge, if authentic and genuine, (which is not admitted,) do not show that a grant has ever been made to the Marquis de Maison Rouge, in his own individual right; and that it was only a contract with him as agent of the persons whom he was to bring with him as settlers upon the said land, by which the Spanish Government bound itself to grant to each of such persons a certain number of acres of land; and that de Maison Rouge did not acquire, by said contract, a right to dispose of the land in question, by sale, deed, or last will and testament, or in any other way.

Secondly. That the conditions of said contract were never fulfilled by the said Marquis de Maison Rouge.

Thirdly. That the said land was never surveyed, and that the settlements have not been made, as became requisite by the conditions of the grant, if a grant was made.

Fourthly. That the said land never was located as pretended by the representatives of the Marquis de Maison Rouge, but was at a different place.

The documents and testimony before the committee do not enable them to decide either upon the genuineness of the grant, or the validity of it, according to the forms which governed grants legally emanating from the authorities of the then province of Louisiana.

The question arising in this case, as to the validity of the title set up by the representatives of the Marquis de Maison Rouge, is one which, in the opinion of the Committee, can only be brought to a termination by the adjudication of some tribunal which can act with deliberation, and under such favoring circumstances as will enable such tribunal, of whatsoever constitution it may be, to avail itself of every requisite, both in law and fact, which may be attainable, to enable it to form a correct judgment respecting the validity of the claim in dispute. It does not occur to the committee that a resort can be had, either by the claimants or the United States, to any tribunal except the following:

1stly. The Congress of the United States.

2dly. A special commission, constituted by a law of Congress, for the purpose of deciding upon this and other claims similarly situated, in the State of Louisiana.

3dly. The judicial tribunals of the United States.

Firstly. The committee are aware that it is a delicate duty, which they feel themselves bound to perform, when they sanction the opinion that the two Houses of Congress do not, by their very constitution, unite all those qualities which are necessary to a thorough, dispassionate, and full investigation of delicate questions of judicature.

It is to questions of policy, expediency, and constitutional provision, rather than the weighing of testimony, the inspection of seals and signatures, and the minute attention which should be given to discrepancies in dates, and the declarations of witnesses, that the capacities of the two Houses of Congress are best adapted. For reasons like these, and to exclude interest and passion, the framers of our constitutional code separated the judicial from the legislative powers of the Government.

A committee, which is an emanation from the House or Senate, possesses, on account of its limitation of numbers, and its quiet and undisturbed sittings, greater facilities for the investigation of judicial questions, than the House or Senate, in session, can be supposed to possess; and yet, such is the nature of the testimony presented, even to the committees of either branch of the Legislature, that great difficulties are felt in coming to satisfactory conclusions, even upon questions which seem very just to those who present them. Ex parte testimony, which seems very just to those who present them. Ex parte testimony, designed colorings, omission of facts, and circumstances which might and would explain the transaction, if openly and fully stated, and that inability, always felt and acknowledged, of being able to learn from papers what may be inferred or known from the truth-telling or non-truth-telling manner of a witness, place obstacles in the way of just and satisfactory decision, which can only be felt by those who are aware of the unsatisfactory and too frequently unjust decisions of popular assemblies.

The claims of the individuals now under consideration, involve in themselves many points which it would be extremely difficult for the two Houses of Congress satisfactorily to investigate; such as, firstly, Whether the grant in question was genuine in its origin, and the title papers authentic.

Secondly. If genuine, whether the title was in due form, and valid, by the laws of the Government from which it originated.

Thirdly. Was the grant absolute or conditional? and, if conditional, have its conditions been complied with by the grantee or his representatives?

Fourthly. Was the grant of such a nature as to vest in the grantee any rights in his individual capacity?

The committee are of the opinion that any decision of the two Houses of Congress would be unavailing, because, if adverse to the claimants, it would be unsatisfactory, and the right to petition being always open to the applicant for justice from the Government, will be continually resorted to; and the claim, being thus liable to perpetual revision by Congress, would never have a determinate decision. If, at any period, the Government of the United States should direct the lands in question to be surveyed and sold, the claimants would then, with at least a color of justice, demand payment, and insist that they had been deprived of their property, without the judgment of their peers, and not according to the laws of the land. In every light in which the committee have been able to view this subject, the opinion is entertained by them, that the two Houses of Congress do not concede upon the title of those who claim under the Marquis de Maison Rouge.

The second tribunal which suggests itself for the purpose of a final adjustment of these claims, is a special commission. The institution of such a tribunal would probably be quite as expensive, if not more expensive, than any other mode which might be resorted to by the Government.

Other considerations may also be urged against this mode of adjusting these claims.

A commission may be composed of such individuals as to render it little competent to the able decision of claims like those under consideration. It may also be influenced by local considerations; by improper attachments, or personal considerations; by interest, remote or immediate; or by undue solicitations of claimants. Nor can the same reliance be at all times reposed in Commissioners, which may be in independent Judges, who hold their offices during good behaviour.

This claim, under the act of 3d of March, 1807, was, by the Commissioners appointed in pursuance thereof, reported for confirmation, and yet the Government of the United States has not confirmed the claim, and, from the lapse of time since the making of that report, and the repeated subsequent applications of the claimants, it would seem that the Government have not considered that report as of any authority, and such might, and probably would be, the result, were another special commission to be instituted.

The above considerations induce the committee to consider it inexpedient to recommend the institution of another special commission, for the adjudication of the claim in question.

If, then, the question of title to the lands claimed under the grant, of supposed grant, of the Marquis de Maison Rouge, *cannot* be adjudicated by Congress, either on account of its ill adaptation to the discharge of such duties, or on account of its indisposition to perform them, and if a special commission ought not a second time to be instituted for the purpose, then, most assuredly, the claimants ought to be permitted, as a dernier resort, to apply to the judicial tribunals of the country for the final disposition of this long contested question. The interests of the United States, those of Louisiana, as well as those of the claimants, require that a termination should be made to the state of abeyance which has been permitted to continue up to the present time. The United States, if the rightful owner of this tract of land, ought to provide for its sale, so as to prevent the population of the State of Louisiana from being retarded; and the claimants under de Maison Rouge ought to be put in a condition to avail themselves of their rights, if rights they have.

The committee do not deem it necessary to enter into detailed reasoning to show the propriety, necessity, or safety, of the reference of this question to the judicial tribunals of the Union. The reasons for this course are such as must suggest themselves to the minds of all, and must be left to produce that decision at which each member will claim the right to arrive for himself.

The committee report a bill to refer these claims to the United States' courts for adjudication.